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TAGS: [PHUM](#) [SOCI](#) [GM](#)
SUBJECT: VISIT OF HOLOCAUST ENVOY O'DONNELL: DISCUSSIONS ON
INTERNATIONAL TRACING SERVICE (ITS)

REF: 05 BERLIN 3427

Classified By: DCM John Cloud. Reason: 1.4(b) and (d)

11. (C) Summary. In January 18 meetings at the Foreign and Interior Ministries, and the Federal Chancellery, German officials signaled a desire to move more quickly toward a resolution of ITS issues than they had in the past, but were nonetheless unsure of how to do so from both a substantive and procedural standpoint. As before (reftel) the Interior Ministry appeared least responsive to U.S. and other pressure for early introduction of a liberal access regime. The Foreign Ministry was aware of the potential political costs of delay but was largely limited to an advisory and hortatory role. Chancellery officials agreed to look into the matter, but had not previously been aware of the details of the case.

While the Interior Ministry said they would table a new draft access regime at an experts' meeting scheduled for February 20 in Luxembourg, but had nothing specific to say about the possible contents, preferring to focus on procedural/legal issues for the implementation of the putative regime. End Summary.

Foreign and Interior Ministries

12. (C) Amb. O'Donnell met for 75 minutes at the Foreign Ministry on February 18 with Foreign and Interior Ministry officials to discuss developments at the January 13 meeting of experts charged with developing a new access regime for Holocaust records held by the ITS. Legal Affairs Asst. Secretary Laeuffer and Office Director Ziegler represented the

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MFA; National Minorities Division officer Willenberg and attorney Buyel-Fromm attended for the Interior Ministry. Laeuffer noted that the German side had moved forward with its proposal tabled on January 13 and that the most pressing issue from his perspective was the question of what form and shape such legal changes would have to take. Amb. O'Donnell noted that the U.S. and others had been disappointed by the German proposal, and hoped that a new proposal grounded in the concept of "open access" would be forthcoming at the next session. He also renewed the U.S. request for a digital copy of the ITS records. O'Donnell also said the U.S. believed a new access regime could be developed without amending the Bonn Accords, which would entail a long ratification process.

13. (C) Willenberg agreed that copies of ITS holdings could and should be provided to all 11 members of the ITS board. However, he argued that these should be provided only after ITS has completed digitizing all its records -- a process expected to take another 18 months. This is, seemingly, a step forward on the German side. However, in subsequent conversations, Amb. O'Donnell and Emboff confirmed that, in

the German view, the copies must be handled in the same manner as the original documents (i.e., with limited access only for humanitarian purposes). Amb. O'Donnell suggested that copying for the board members could proceed in parallel with the ITS's own copying, rather than wait for the entire process to finish.

¶4. (C) Willenberg also noted European Union privacy rules, which he said the EU members of the ITS would have to apply to the data and which, in his view should also be applied by non-EU members of the board. Agreeing on a common data protection plan should, he said, be a key element of the February 20 experts group meeting. Willenberg promised that a new draft access regime with detailed provisions on data protection would be provided for discussion then. Willenberg also raised concerns about liability, noting that the U.S. and UK had both made clear that, as states, they could not provide immunity to ITS. The Ministry thought that the best way to proceed would be to establish a system in which researchers assume the liability for their actions. Laeuffer raised some concern about how long it would take to make legally-binding changes to the Bonn Accords, noting that solving the liability issue would almost certainly require legal action of some sort. He was more optimistic that copying and changing the access regime could be accomplished without legal action. At last with regard to copied records, Amb. O'Donnell suggested that liability would apply only to the country holding the copies; as to the original holdings, he suggested exploring insurance options.

¶5. (C) U.S. Rep to the ITS Board Pattison then asked if Germany believed amendments to the Bonn Accords were required to come up with a liability regime, or whether this could be decided by the ITS board. MFA's Laeuffer suggested the question was open, but Interior's Willenberg then offered a lengthy and complex elaboration of how Interior views the process of establishing a new access regime. Willenberg

argued that a legally binding change (requiring ratification by at least some of the board member states) to the Bonn Accords was required in order to give the ITS a research function (in addition to its humanitarian purpose) and perhaps for liability or other matters. Changes would also be required to the agreement between the members states and the ICRC on the administration of ITS -- these might not require legal action, he suggested. Finally, the board itself could approve the actual terms of the access regime for researchers. Willenberg acknowledged the complexity of this structure, but thought it could be perhaps abbreviated by working on all three elements in parallel and perhaps even implementing a new access regime on a provisional basis, if that were legally possible. Laeuffer reacted with some consternation, saying that such a "top-down" approach would take years and create political problems.

Chancellery (KA)

¶6. (C) O'Donnell met for 45 minutes with KA Division Director for Interior an Justice matters Kuhne, Office Director for Religious Affairs Tempel, and Americas' Desk officer Pellet. After a discussion of the generally excellent state of U.S.-German cooperation on Jewish- and Holocaust-related issues, Amb. O'Donnell outlined the problems the U.S. was having in obtaining copies of the ITS records and of setting up an access regime for researchers. Kuhne admitted that he had not followed the issue previously and was unaware of the details. He promised to look into the matter with the Interior Ministry and follow developments at the Luxembourg experts' group meeting. He did not offer any specific views, but said that there were times when the simple fact of KA interest had an impact.

¶7. (C) On another issue, OD Tempel asked Amb. O'Donnell if he had any information on a videoclip shown at a New York dinner organized by the Simon Wiesenthal Center. The clip, according to Tempel and Pellet, inaccurately portrayed Germany as facing a massive surge in neo-Nazi and

anti-Semitic activism. Amb. O'Donnell agreed to look into the matter; he was not previously aware of the clip.

¶8. (C) Comment: In a subsequent meeting with Dr. Laeuffer on other issues, Laeuffer expressed to Amb. O'Donnell his personal frustration with the lack of a willingness by Interior Ministry lawyers to come up with creative ways to find a solution to opening the Archives and making copies for member countries. He suggested that there would have to be an approach from the American side to the Interior Minister or political level to get more flexibility. (Embassy will follow up with the Interior Minister's office.) Laeuffer also said that he wasn't worried about the liability issue, but was more concerned about finding a way to reach agreement with the U.S. on how the documents would be used after they were copied and are in the hands of member countries. Laeuffer promised to again consider the U.S. proposal for copying the digitized records that was put forward by the U.S. delegation at the February working group meeting in the Hague. End Comment.
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